BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RICHARD D. BURRIS	)	
Claimant	)	
VS.	)	
	)	Docket No. 206,495
BURRIS ENTERPRISES	)	
Respondent	)	
AND	)	
	)	
HARTFORD ACCIDENT & INDEMNITY COMPANY	)	
Insurance Carrier	)	
AND	)	
	)	
KANSAS WORKERS COMPENSATION FUND	)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Special Administrative Law Judge William F. Morrissey dated June 27, 1996, wherein the Special Administrative Law Judge granted claimant benefits finding that claimant's need for bilateral knee replacement stemmed from an accidental injury arising out of and in the course of claimant's employment with respondent. He further found that claimant's date of accident was November 1, 1995, which satisfied the requirements of both K.S.A. 44-520 and K.S.A. 44-520a in that claimant provided notice to respondent of an accidental injury within 10 days of the date of accident and provided written claim to the respondent within

200 days of the date of accident. The Special Administrative Law Judge rejected respondent's argument that claimant's ongoing symptomatology stemmed from the natural aging process or normal activities of day-to-day living or was the result of a preexisting medical condition and not the result of any injury suffered with the respondent.

ISSUES

(1) Whether claimant met with accidental injury arising out of and in the course of his employment with the respondent and the appropriate date of that accident.

(2) Whether claimant provided notice to the respondent as required by K.S.A. 44-520.

(3) Whether claimant provided timely written claim to respondent as required by K.S.A. 44-520a.

(4) Whether claimant's ongoing symptomatology to his knees stems from the natural aging process or the normal activities of day-to-day living and is not compensable under the Workers Compensation Act.

(5) Whether claimant suffered injury from a preexisting medical condition and not the result of a work-related accident as alleged by claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing the Appeals Board finds as follows:

The Appeals Board finds that the Order of the Special Administrative Law Judge should be affirmed in all respects. Claimant, a long-term employee of respondent, suffered bilateral knee symptomatology through his last day worked, November 1, 1995, when he was finally forced to leave work as a result of ongoing injuries to his knees. Claimant was treated by several doctors for this ongoing knee problem. The doctors unanimously agreed that claimant's ongoing symptomatology stemmed from the physical nature of claimant's working conditions rather than, as respondent contended, the natural aging process, normal activities of day-to-day living, or a preexisting medical condition.

Dr. Glenn V. Carney, from the Iola Osteopathic Clinic, felt that claimant suffered from bilateral knee degenerative osteoarthritis which occurred over a long period of time from claimant's heavy lifting, bending, twisting, and walking in mud in the oil fields while working for respondent. Dr. Richard L. Hull, an osteopath, also from Iola, Kansas, likewise, felt claimant had arthritic knees which were a progressive problem and had gotten worse as a result of claimant's work in the mud, on irregular surfaces, and jumping off of and

crawling onto drilling platforms. He went on to opine that claimant's hobbies and other personal activities had little or no effect on claimant's condition. Dr. William L. Dillon, an orthopedic surgeon from Parsons, Kansas, felt that claimant's work history of spending long hours in difficult situations in the oil fields, at the very least, aggravated his degenerative disease.

This medical evidence satisfies the question of whether claimant suffered accidental injury arising out of and in the course of his employment with the respondent.

The Appeals Board must next consider whether claimant's date of accident should be considered the last date the claimant worked. Claimant alleged that his termination of employment on November 1, 1995, occurred because the tasks being performed on the job were simply causing him too much intolerable pain and claimant could not continue in his employment under those conditions. Two recent Court of Appeals cases have discussed date of accident in workers compensation situations. In both Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220 (1994) and Condon v. Boeing, 21 Kan. App. 2d 580, 903 P.2d 775 (1995), the Court of Appeals decided whether the last day claimant worked for respondent could constitute the date of accident for workers compensation purposes. Both cases ultimately stand for the proposition that when dealing with a micro-trauma situation, where claimant is unable to continue to perform his work duties due to the ongoing difficulties associated with his work-related injury, the date of accident is the last day of work. With an accidental injury date of November 1, 1995, the Appeals Board finds that claimant has provided both notice as required by K.S.A. 44-520 and written claim as required by K.S.A. 44-520a.

The Appeals Board also finds that the medical evidence does not support the respondent's contention that claimant's injuries result from the natural aging process or normal activities from day-to-day living, nor from a preexisting medical condition. While it is acknowledged that claimant did have preexisting problems in his knees, it is also noted that, for several years prior to his employment with respondent, claimant had relatively little difficulty with his knees. The medical statements from Dr. Carney, Dr. Hull, and Dr. Dillon point to the claimant’s employment with respondent as being either the cause of or a significant contributing factor to claimant’s increased symptomatology and the need for bilateral surgeries.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Special Administrative Law Judge William F. Morrissey dated June 27, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

c: Patrick C. Smith, Pittsburg, KS
Garry W. Lassman, Pittsburg, KS
Henry C. Menghini, Pittsburg, KS
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director